

Commentary

The Authority and Responsibility of School Officials in Responding to Cyberbullying

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Abstract

Online social aggression, or cyberbullying, involves speech. Many incidents involve off-campus online speech that either creates or has the potential to create disruption at school or that may interfere with the targeted student's ability to participate in educational activities and programs. Addressing these situations requires an assessment of the extent of authority and responsibility of school officials to respond. "Authority" refers to the legally justified right to impose formal discipline. Because cyberbullying involves online speech, the question of legal authority necessarily involves addressing the balance between the student right of free speech and student safety and security. "Responsibility" refers to the legal obligation under negligence theory and civil rights laws to exercise reasonable precautions to protect students from online social aggression and to intervene in response to reports of actual incidents. © 2007 Society for Adolescent Medicine. All rights reserved.

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For an unfortunate number of today's "totally wired" kids and teens, electronic communications have become the new vehicle used to ridicule, harass, and denigrate. Cyberbullying—being cruel to others by sending or posting harmful material or engaging in other forms of social aggression using the Internet or other digital technologies—is a concern that school officials must be prepared to respond to. Some cyberbullying is occurring while students are at school by students using cell phones or the district Internet system. Students frequently can bypass the filter to get to sites where they can post damaging material. The most harmful incidents of cyberbullying, however, involve extensive online harmful actions taken at home that impact school, because school is where the students are physically together.

This new phenomenon raises concerns for school officials regarding the extent of their legal authority and responsibility. (The current article provides general information about legal issues related to cyberbullying; for specific guidance, schools should consult with their attorney.) "Authority" refers to the legally justified right to

impose formal discipline. The question of legal authority involves addressing the balance between student free speech rights and student security. "Responsibility" refers to the legal obligation to protect students. Failure to exercise reasonable precautions or to intervene could lead to liability under negligence or civil rights laws. Unfortunately, as this is a new concern, there is not extensive case law to guide decision-making.

Authority

The landmark case involving student free speech rights is the case of *Tinker v. Des Moines Indep. Cmty. Sch. Dist.* 393 U.S. 503 (1969). In *Tinker*, the Court stated that students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Id.* at 506. However, the Court acknowledged "the special characteristics of the school environment" by permitting school officials to prohibit student speech if that speech "would substantially interfere with the work of the school or impinge upon the rights of other students," *Id.* at 509, including the right "to be secure." *Id.* at 508.

Over the years, the *Tinker* "balance" between the free speech and security has been applied to different forms of

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student speech, including off-campus student newspapers, slogans or symbols on student clothing, and off-campus online speech directed at school staff.

School districts must be able to show “that its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint.” *Id.* at 509. *Tinker* does not require a demonstration of actual disruption. It requires a reasonable, factual basis to anticipate disruption at school. *Id.* at 514.

When is it reasonable to believe that the material posted on the web site might cause substantial disruption? Fortunately, when the issue clearly involves school safety, courts give deference to school officials if they are able to provide specific facts to back up their reasoning. (See for example *D.B. v. Lafon*, No. 06-5982 [6th Cir. Feb. 21, 2007]). School officials must carefully evaluate the situation and document evidence justifying their decision. The documentation from these incidents can also provide helpful insight to inform the district’s efforts. (A template is available on the Center for Safe and Responsible Internet Use web site <http://csriu.org> that can be used by school officials to evaluate and document these incidents.)

The imposition of formal discipline, without additional efforts, could result in greater harm to the students targeted. Online retaliation can be vicious and very difficult to control. It is essential to enlist the assistance of parents to remove the harmful material and to monitor the online activities of their children to prevent any retaliation.

Responsibility

District liability concerns are clearly raised when cyberbullying occurs through a district Internet system or via digital devices used on campus; however there is no case law in this area.

In a negligence case, the question would be whether the school exercised a reasonable standard of care. Under civil rights statutes, the question would be whether the school effectively caused, encouraged, accepted, tolerated, or failed to correct a sexually or racially hostile environment of which it had actual or constructive notice. A “hostile environment” is an educational environment for any student that is intimidating, threatening, abusive, and impairs that stu-

dent’s ability to participate in or benefit from an education program or activity.

What are the “reasonable precautions” that schools should take to address this known concern? Adapting the strategies known to be effective in preventing bullying, such as the Olweus Bullying Prevention Program, to this new challenge would likely be considered prudent. (The effectiveness of this approach has not been evaluated.) Reasonable precautions would include the following: (1) Establish an organized planning effort to address the concerns; regularly conduct needs assessment. (2) Evaluate policies and Internet use management practices. (3) Implement more effective practices to monitor student Internet use. (4) Educate students and teachers. (5) Implement a cyberbullying report, review, and intervention process. (6) Engage in ongoing evaluation of effectiveness.

Can a district be held financially liable if on-campus or off-campus online speech has created a hostile environment at school for students who are in a protected class under civil rights statutes?

In *Gebser v. Lago Vista Independent School District*, 524 U.S. 274 (1998), the Supreme Court found that a district could be liable for an employee’s harassment of a student when district officials knew and failed to take any corrective action. *Gebser* involved a situation in which a teacher was engaging in sexual relations with a student. Although the relationship was initially established on-campus, the sexual activities were occurring off-campus. Under *Gebser*, a school district can be held liable if: (1) an appropriate school official has actual knowledge of discrimination; (2) the school official has authority to take corrective action to address the discrimination; (3) the school official fails to respond adequately; and (4) the inadequate response amounts to deliberate indifference.

Under *Tinker*, a school official has the authority to take corrective action to address harmful speech occurring on-campus or off-campus that has or could cause substantial disruption at school or interference with the rights of students to be secure. Thus an argument can be made that if a school official has actual knowledge of online harmful speech that has created a hostile educational environment that is impairing the ability of a student protected under any of the civil rights statutes to receive an education, that official must take corrective action.